

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Requests for Waiver by	)	
	)	
Lucia Mar Unified School District	)	File Nos. SLD-249712, 252798
Arroyo Grande, California	)	
	)	
Ontario Local Schools	)	File No. SLD-237333
Mansfield, Ohio	)	
	)	
School Administrative District 04	)	File Nos. SLD-224552, 224651
Guilford, Maine	)	
	)	
Traverse City Area Public Schools	)	File Nos. SLD-214771, 217755
Traverse City, Michigan	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	

**ORDER**

**Adopted: May 27, 2004**

**Released: May 28, 2004**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration Requests for Waiver filed by Lucia Mar Unified School District, Arroyo Grande, California; Ontario Local Schools, Mansfield, Ohio; School Administrative District 04, Guilford, Maine; and Traverse City Area Public Schools, Traverse City, Michigan (together, Petitioners).<sup>1</sup> The Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) adjusted the funding awarded to the Applicants in Funding Year 2001 because of their failure to meet the FCC Form 486 postmark deadline.<sup>2</sup> For the reasons set forth below, we deny the waiver requests.

2. The filing deadline for FCC Form 486 containing requests for support for telecommunications services only, is a regulatory requirement.<sup>3</sup> The Commission has authority to waive any provision of its rules for good cause shown.<sup>4</sup>

<sup>1</sup> Letter from Jon Hitchen, Lucia Mar Unified School District, to Federal Communications Commission, filed May 24, 2002; Letter from Michelle L. Vance, Ontario Local Schools, to Federal Communications Commission, filed October 9, 2002; Letters from Matthew Oliver, School Administrative District 04, to Federal Communications Commission, filed December 19, 2002; Letter from Gary P. Derrigan, Traverse City Area Public Schools, to Federal Communications Commission, filed March 21, 2003 (together, Requests for Review).

<sup>2</sup> *See id.*

<sup>3</sup> *See Request for Review by Eastern Lebanon County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-

3. Waiver is appropriate only if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the rule.<sup>5</sup> We consistently have held applicants to a high standard before granting a waiver. Given the thousands of applications SLD processes each year, it is administratively necessary to place the burden of meeting deadlines on the applicants.<sup>6</sup> Applicants are required to know the relevant rules of the E-rate program, and are ultimately responsible for the timely submission of their applications.<sup>7</sup> When timely filing is critical, it may be necessary for applicants to provide proof of mailing to show the document was filed by the deadline.<sup>8</sup> General confusion and complexity of the application process are insufficient to justify a waiver.<sup>9</sup> In addition, neither illness nor misunderstanding of employees relieves applicants of their responsibility to understand and comply with the program rules or procedures.<sup>10</sup> Mistaken information

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232946, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 5466 (Wireline Comp. Bur. 2003) (*Eastern Lebanon Order*) (granting waiver request for telecommunications services for Funding Year 2001 where SLD unduly delayed notifying applicant of incomplete FCC Form 486). 47 C.F.R. § 54.520(g)(1). We note that applicants receiving discounts on Internet access and/or internal connections in Funding Year 2001 that received Funding Commitment Decision Letters (FCDLs) and started services prior to October 28, 2001 are subject to the October 28, 2001 deadline imposed by the Children's Internet Protection Act (CIPA). This CIPA certification deadline is statutory and cannot be waived. 47 U.S.C. § 254(h)(5)(E)(i)(I), (h)(6)(E)(i)(I); see *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, paras. 10-14 (2001). See also *Request for Review by East Carroll Parish School Board, Federal-State Joint Board on Universal Service Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-232946, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 24591 (Wireline Comp. Bur. 2002).

<sup>4</sup> 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*WAIT Radio*).

<sup>5</sup> 47 C.F.R. § 1.3; see *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>6</sup> See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, 25612-25613 (Com. Car. Bur. 2000).

<sup>7</sup> *Request for Waiver by Springdale Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-195867, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 3543, 3545 (Com. Car. Bur. 2002); *Request for Waiver by Dermott Special School District, et al, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-252777, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 5091, 5093 (Com. Car. Bur. 2002) (*Dermott Order*).

<sup>8</sup> See *Request for Review by Jaffrey-Ringe Cooperative School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-257632, CC Dockets No. 96-45 and 97-21, Order, 17 FCC Rcd 9475 (Wireline Comp. Bur. 2002). See also *Request for Waiver by Alpine County Unified School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC. 471.01-24-00.5400004, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 1718 (Com. Car. Bur. 2002)(suggesting forms of documentation that may be used to show proof of mailing).

<sup>9</sup> *Request for Waiver by Elgin Independent School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-205168, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 15895 (Com. Car. Bur. 2001).

<sup>10</sup> *Request for Review by East Brunswick Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-276585, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 19274 (Com. Car. Bur. 2001) (denying waiver request in case when employee handling forms resigned due to illness and new person did not know requirements); *Request for Review by*

from an SLD employee does not absolve an applicant from following the program requirements.<sup>11</sup> Further, the assertion that denial of an application may have a detrimental impact on an applicant does not create special circumstances or particular facts that warrant a waiver of the Commission's rules.<sup>12</sup> In keeping with our prior decisions, we determine that the Petitioners have not demonstrated the special circumstances necessary for a waiver of our rules.

4. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the requests filed by Lucia Mar Unified School District, Arroyo Grande, California, on May 24, 2002; Ontario Local Schools, Mansfield, Ohio, on October 9, 2002; School Administrative District 04, Guilford, Maine, on December 19, 2002; and Traverse City Area Public Schools, Traverse City, Michigan, on March 21, 2003 are DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Narda Jones  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

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*St. Mary's Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.12-07-99.02000002, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 12936, para. 5 (Com. Car. Bur. 2001) (denying a waiver request to the extent it is requested "due to misunderstanding of the program rules").

<sup>11</sup> *In re Mary Ann Salvatoriello*, Memorandum Opinion and Order, 6 FCC Rcd 4705, 4707-08, para. 22 (1991) (citing *Office of Personnel Management v. Richmond*, 497 U.S. 1046 (1990)). See also *Request for Waiver by Ballard Community School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File Nos. SLD-2689111, SLD-268909, SLD-266579, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 15891 (Com. Car. Bur. 2001).

<sup>12</sup> *Application for Review of a Decision by the Wireline Competition Bureau, Information Technology Department State of North Dakota, Bismarck, North Dakota, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-245592, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 21521, 21528 (2003).